

1
2
3
4
5
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
6
7
8

9 Whaleco Incorporated,

No. CV-23-02243-PHX-MTL

10 Plaintiff,

**AMENDED TEMPORARY
RESTRANING ORDER**

11 v.

12 TemuExpress.com, et al.,

13 Defendants.

14
15 This matter is before the Court on Plaintiff Whaleco Inc.'s Ex Parte Motion for
16 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction (Doc.
17 8). Plaintiffs seek a temporary restraining order against <TemuExpress.com>,
18 <TemuGivesBack.com>, <Temuinternationality.com>, <Temua.cc>, <Temu688.com>,
19 <Temufun.com> (together, the "Infringing Domain Names"), and John Does #1-20. The
20 Court held an ex parte hearing on the Motion on November 3, 2023. After considering the
21 papers submitted, and for the reasons stated on the record,

22 **IT IS ORDERED** granting Plaintiff's Motion (Doc. 8) to the extent that the Court
23 hereby issues the following Temporary Restraining Order, which supersedes the Court's
24 previous Temporary Restraining Order (Doc. 13).

25 1. Defendants, their officers, agents, servants, employees, attorneys, and all
26 those in active concert or participation with them, are temporarily restrained from
27 infringing upon the TEMU marks, or Plaintiff's rights therein, or using or exploiting such,
28 by:

1 A. Using the TEMU marks or any reproduction, counterfeit, copy, or
2 colorable imitation of the TEMU marks for and in connection with any goods, services, or
3 their packaging;

4 B. Engaging in any course of conduct likely to cause confusion,
5 deception, or mistake, or to injure Plaintiff's business reputation, or to dilute the distinctive
6 quality of the TEMU mark;

7 C. Engaging in acts that constitute trademark infringement,
8 counterfeiting, dilution, false designation of origin, cybersquatting, or unfair competition
9 under the laws of the United States and the State of Arizona and that would damage or
10 injure Plaintiff's business reputation or damage or dilute the value of Plaintiff's
11 trademarks;

12 D. Using, linking, transferring, selling, exercising control over, or
13 otherwise owning the Infringing Domain Names or any other domain name that
14 incorporates, in whole or in part, any of the TEMU marks, or any domain name that is used
15 in connection with an infringing website or page;

16 E. Creating, operating, owning, overseeing, or otherwise exercising
17 control over any infringing website, web page, or parked page, incorporating, including, or
18 otherwise displaying the TEMU mark, or any version of Plaintiff's name in promotional,
19 advertising, or pay per click campaigns;

20 F. Effecting any assignment or transfer, forming new entities or
21 associations, or utilizing any other device for the purpose of circumventing or otherwise
22 avoiding any of the prohibitions set forth in this Order.

23 2. GoDaddy.com LCC (pursuant to FRCP 65(d)(2)(C)), or its authorized agents
24 or representative, shall within one day of notice of this Order place the Infringing Domain
25 Names on registry lock, making the domain names non-transferable by Defendants, and on
26 registry hold, which prevents any website associated with the domain names from resolving
27 when queried by a browser.

28 3. GoDaddy.com LLC (pursuant to FRCP 65(d)(2)(C)), or its authorized agents

1 or representative, shall within one day notice of this Order disable the domain name server
2 information for each of the Infringing Domain Names, rendering the domain names
3 inaccessible.

4 4. Domains by Proxy, LLC (pursuant to FRCP 65(d)(2)(C)), or its authorized
5 agents or representative is directed to disclose to Plaintiff the identities and all contact
6 information for those who registered the Infringing Domain Names (including, but not
7 limited to, name, physical and email addresses, and phone number(s)) and provide the same
8 to Plaintiff within three (3) business days from the date of service of this Order.

9 5. For good cause shown, the Court authorizes alternative personal service as
10 follows: Plaintiff shall initiate contact with the ultimate licensee(s) of the Infringing
11 Domain Names through the “Contact Domain Holder” contact page at GoDaddy.com to
12 advise of the pendency of this lawsuit, this Order, and the relief sought in the suit. Plaintiff
13 shall also email serve all pleadings in this case (including Summons and Complaint) by
14 email to complaint.com@domainsbyproxy.com. Once the direct email address of the
15 ultimate licensee(s) is/are obtained, all papers in this case shall be served by email sent to
16 that/those address(es) as well. Email service to the(se) email address(es) shall constitute
17 personal service effective upon transmission. The Court finds said means reasonably
18 calculated to effect service, provide actual notice to Defendants, and to comport with due
19 process.

20 6. Plaintiff shall make reasonable efforts at service on the ultimate licensee(s)
21 of this TRO within two (2) business days of receiving notice that GoDaddy.com has
22 disabled the Infringing Domain Names and placed them on registry lock and hold. Notice
23 prior to such time is not required, and the Court finds that such prior notice creates a
24 reasonable risk that effective relief will be thwarted.

25 7. Plaintiff shall post a bond of \$1,000 to the Clerk of Court no later than
26 November 8, 2023.

27 8. Pursuant to Federal Rule of Civil Procedure 65(b)(2), this Temporary
28 Restraining Order shall be in effect until November 17, 2023 at 11:59 p.m. (Arizona time).

1 **IT IS FURTHER ORDERED** setting an in-person Preliminary Injunction Hearing
2 for November 20, 2023 at 10:00 a.m. (Arizona time) in Courtroom 504, 401 West
3 Washington Street, Phoenix, Arizona 85003 before Judge Michael T. Liburdi. Defendants
4 shall appear and show cause why a preliminary injunction on the same terms shall not
5 issue. Any opposition brief shall be due by November 14, 2023. Plaintiff may file a reply
6 by December 4, 2023.

7 **IT IS FINALLY ORDERED** that Plaintiff shall, by November 17, 2023, file a
8 notice advising the Court of whether Plaintiff intends to call witnesses at the Preliminary
9 Injunction Hearing, and if so, who the witnesses are going to be, the subject matter of their
10 testimony, and whether the witnesses request to appear telephonically.

11 Dated this 16th day of November, 2023.

12
13 
14

15 Michael T. Liburdi
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28